No. 677

APR 13 1951

CHARLES ELMORE CROPLEY

In the Supreme Court of the United States

No. 14168

CIVIL

M. M. MEREDITH,

Petitioner and Appellant below,

vs.

JOHN DEERE PLOW COMPANY,
of Moline, Illinois, a Corporation,

Respondent and Appellee below.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit, and Brief in Support thereof.

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To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioner respectfully shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED

This is an action at law for damages. It was originally filed in the District Court of the State of

Iowa in and for Cass County and was removed to the United States District Court for the Southern District of Iowa upon the motion of the Defendant Corporation, the Respondent herein.

Upon Motion of Respondent filed in the United States District Court, the cause was dismissed for the reasons that the allegations contained in Complaint were insufficient to constitute a cause of action. Petitioner thereupon appealed to the United States Circuit Court of Appeals for the Eighth Circuit and the Circuit Court sustained the ruling of the District Court. Plaintiff petitioned said Circuit Court of Appeals for a Rehearing. This Petition was denied.

The principal questions involved on said appeal were whether sufficient facts were stated in Plaintiff's (Petitioner) Complaint to entitle him to relief; whether a contractual relationship existed between the Petitioner and the Respondent, and if such contractual relationship did exist, was it void for lack of mutuality and indefiniteness.

Plaintiff is a retail implement dealer at Atlantic, Iowa. Defendant Corporation, with a principal place of business at Moline, Illinois, is a wholesale distributor of implements (R. 1 & 2). Petitioner is the successor to and entitled to all the rights of one C. P. Meredith (R. 6 & 7). Respondent, who had tried and failed to establish a satisfactory dealership, solicited C. P. Meredith, predecessor to Petitioner, to become Defendant's dealer (R. 5). Defendant offered if C. P. Meredith would desist competitive hostilities against Defendant and Defendant's products and would become the Defendant's dealer, then

C. P. Meredith could remain Defendant's dealer, if C. P. Meredith so desired, for so long as Defendant continued in business. This offer, orally made, was accepted by C. P. Meredith and he thereupon became Defendant's dealer (R. 5 & 6).

C. P. Meredith and this Petitioner remained Respondent's dealer for the next twenty-five years (R. 7) and during that period Respondent often stimulated Petitioner with assurances that placing of dealership with Petitioner was of a permanent nature; that only by neglect or dereliction would Petitioner cease to be the dealer. In addition, and on many occasions, Respondent solicited Petitioner to perform acts which Petitioner was not legally bound to perform, and almost invariably accompanied these solicitations with statements to the effect that Respondent recognized that the Petitioner had the right to retain the dealership, in the absence of gross fault, so long as the Petitioner desired. In response to these assurances, promises, statements and solicitations, Petitioner many times performed the requested acts and was influenced in attitude (R. 3 & 4). Petitioner would not have performed these acts had he believed or suspected Respondent in any way denied or distputed his right to retain the dealership, in the absence of great fault, so 'long as Plaintiff desired (R. 8).

At the time the Agreement was made, this dealership was of small or nominal value and at the time of termination it was of recognized great value. This enhancement in value was largely due to Petitioner's labors and expenditures and these labors and expenditures were applied with Respondent's knowledge, consent and approval

(R. 8). Upon the termination of the dealership, the Respondent converted to its own use the fruits of Petitioner's labors and the Petitioner's valuable assets, without reimbursement to the Petitioner (R. 3 & 4).

Petititoners spent much time, effort, and money in building up this dealership and did so with the knowledge and approval of the Respondent. The Petitioner was deprived of the dealership without compensation from any source (R. 3 & 4) in direct violation of the promise and statements of the Respondent, against Petitioner's desire and without Respondent itself retiring from the business. That because of this conduct of the Repondent, Petitioner has been damaged to the extent of $200,000.00.

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THIS COURT HAS JURISDICTION

I. There is a conflict between the decisions of different Circuit Courts. The case of *Kelly-Springfield Tire Co. v. Bobo,* 4 F. (2d) 71, 268 U. S. 694, 45 S. Ct. 513 (9th CCA) holds that no consideration other than common-law consideration is necessary to bind a wholesaler to his promise to grant the dealer different termination rights in a dealership, than he himself retains. The Eighth Circuit Court of Appeals, in the present case decides that common-law consideration is insufficient to bind a wholesaler to its promise to grant the dealer termination rights different than the wholesaler itself retains. It holds that the dealer must make a special promise to retain the dealership for the identical period or the wholesaler will not be bound.

II. There is a conflict on a point of local law. *Standard Oil Co. v. Veland*, 207 Iowa 1340, 224 N. W. 267, holds mutuality is not essential to an Iowa Contract. The present case holds mutuality of termination rights is essential to an Iowa dealership agreement.

III. In the Petitioner's belief the important Federal question is posed as to whether Courts exceed their powers by their failure to enforce a promise, otherwise valid for the reasons that certain requirements imposed by the Court have not been complied with.

IV. The present case is in conflict with the case of *Dickerson v. Colgrove*, 100 U. S. 578, as to the question of Estoppel.

V. The present case is in conflict with law of the State of Iowa *(McDowell v. McDowell*, 141 Iowa 286, 119 N. W. 702).

THE QUESTION PRESENTED

The question presented to the Court is whether it is a prohibited usurpation of power for Courts to hold promises void that have been exchanged for common-law consideration, for reasons other than that their enforcement is against public policy or that their enforcement is impossible.

A further question that is presented is whether the legal doctrines of Estoppel in Pais; Quasi-contract; and Right of Recoupment apply in retail dealerships.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

(a) Petitioner respectfully advances as one of the reasons for the issuance of a Writ of Certiorari, the fact that there now exists a confused state of law regarding dealership agreements. There is at the present time an uncertainty as to the provisions essential to the validity of a dealership agreement and since an appreciable portion of the present day economy is controlled thereby, it is necessary that this Honorable Court determine the effect of such dealership agreements. The present case adds to, rather than clarifies, the present state of confusion.

(b) Petitioner respectfully urges that his right to contract has been impaired by the ruling that the agreement, here under consideration, was not binding on the Respondent.

Wherefore, your Petitioner prays that a Writ of Certiorari issue under the Seal of this Court, directed to the Circuit Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case on its docket No. 14168, M. M. Meredith, Appellant v. John Deere Plow Company of Moline, Illinois, a corporation, Appellee, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States; and that the judgment herein of said Circuit Court of Appeals for the

Eighth Circuit be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated at Atlantic, Iowa, this 9th day of April, A. D., 1951.

M. M. MEREDITH, *Petitioner,*

By: JAMES REGINALD LARSON, Atlantic, Iowa,

Counsel for Petitioner.

OF COUNSEL:

GEORGE C. DALTON,
Atlantic, Iowa.

THOMAS M. GAFFNEY,
Atlantic, Iowa.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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OPINION IN COURT BELOW

The Opinion in the United States District Court for the Southern District of Iowa (R. 18) is reported in 89 Fed. Supp. 787, and the Opinion of the United States Circuit Court of Appeals for the Eighth Circuit (R. 37) is reported in 185 Fed. 2nd 481. The Order denying the

Petition of Appellant for hearing is found in the Record (Page 49).

JURISDICTION

1. The date of the Judgment to be reviewed is December 20, 1950 (R. 40) and the date of the denial of the Petition for Rehearing is January 15, 1951 (R. 49).

2. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254. The Circuit Court of Appeals has in this case "decided an important question of Federal law which has not been, but should be, settled by this Court"; "has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter." (Supreme Court Rule 38 (5) (1).)

3. Paragraph Seventeen (R. 5 & 6) of the Petitioner's Complaint alleges that an act was exchanged for a promise to maintain a dealership for a certain period and the promise of the Respondent was held by the opinion of the Circuit Court to be nonenforceable (R. 40) which is in conflict with the decisions of *Kelly-Springfield Tire Co. v. Bobo,* 4 Fed. (2d) 71, 45 S. Ct. 513, 268 U. S. 694 (9CCA).

4. The Circuit Court of Appeals has stated the substantive law of Iowa to be that mutuality of termination rights is essential to validity of dealership agreements (R. 40). The case of *Standard Oil Co. v. Veland,* 207 Iowa 1340, 1343, 224 N. W. 267, holds that mutuality of termination rights is *not* essential to the validity of any Iowa agreement.

5. The Circuit Court has evidently held that the allegations contained in Paragraph Twenty (R. 8) are insufficient to estop Respondent from exercising his right to terminate at will. It is the belief of the Petitioner that this is in conflict with the decision of the United States Supreme Court in the case of *Dickerson v. Colgrove* (100 U. S. 578).

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STATEMENT OF THE CASE

This has already been stated in the preceding Petition (Pages 1 & 2) which is hereby adopted and made a part of this brief.

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SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals, Eighth Circuit, erred in holding that the agreement in suit had a congenital weakness which rendered it unenforceable as to the future and made it subject to termination by either of parties.

2. The Circuit Court of Appeals, Eighth Circuit, erred in holding that the agreement was terminable by either of the parties at will without incurring liability for damages to the other.

3. The Circuit Court of Appeals, Eighth Circuit, erred in holding that the decision in the case of *E. I. DuPont DeNemours & Co. v. Claiborne-Reno Co.*, 64 Fed. (2d) 224 was relevant to the present case.

4. The Circuit Court of Appeals erred in denying the Petition for Rehearing on the grounds that allega-

tions contained in Petitioner's Complaint as to estoppel, recoupment and quasi-contract were insufficient to constitute a cause of action.

ARGUMENT

Summary of Argument

The law governing dealership agreements as interpreted here by the Circuit Court of Appeals, directly fosters monopoly. Further, the decision, as interpreted by this Petitioner, denies to a retail dealer, under a dealership agreement, the legal doctrines of Estoppel, Quasi-Contract and the Right of Recoupment.

The law is in conflict on the qualifications and effect of such type dealership agreements and since said agreements foster and control such a large part of our economy, it is vital to commerce that the confusion now existing be dispelled by adjudication of the matter by the Supreme Court of the United States.

I. The Requirement that termination rights of parties in a dealership agreement be identical, fosters monopoly.

Because it drives independent retailers out of existence, it is imprudent for a retailer to contract for a dealership without both the right to terminate at will and also the right to bind the wholesaler for a definite period. Prudence demands his retention of both rights. So long as the dealership continues, he is obliged to make great expenditures in endeavoring to sell. He is likewise required to buy. But the quality, design and price of what

he must buy is from the nature of the two occupations wholly determined by the whoesaler. The dealer cannot prudently agree to subject himself to these onerous obligations for longer than the dealership proves profitable. Neither can he prudently consent to the dealership's premature termination. For as soon as the dealership ends, the dealer loses all benefit from prior expenditures. Also the wholesaler is then free to face the dealer in the role of competitor, using to the dealer's disadvantage the results of the dealer's previous efforts, while the dealer must meet such competitor under the handicap of having previously sponsored him, but the mutuality requirement demands he choose one horn or the other of the dilemna. If he chooses to relinquish at will, from thenceforth his existence is by the wholesaler's suffrance. If he chooses to bind the wholesaler for a definite period, he must in effect himself sign a blank check. He must agree for the same period to buy and endeavor to sell whatever the wholesaler sees fit to furnish him—an obligation not conducive to long-continued existence.

The inevitable result of such harsh conditions imposed on the independent retailer is to drive him out of business—to concentrate retail distribution more and more into fewer hands.

The requirement of mutuality also gives entrenched and established wholesalers an undue competitive advantage over newcomers, for this requirement deprives a wholesaler of one of his most effective methods for gaining entrance to a new or difficult market, which is the method of granting dealership privileges for a definite period. The doctrine of mutuality makes such grant

of little value to the recipient. By such deprivation the doctrine of mutuality discourages wholesome competition. (R. 5) Par. 16 of Plaintiff's Petition shows that only after Defendant promised Plaintiff a dealership privilege for a definite period was Defendant able to gain entrance to that particular market.

II. Great confusion in the law now exists as to the essentials of a dealership agreement.

There is at the present time much doubt and uncertainty as to the provisions essential to the validity of a dealership agreement. The Court can take judicial notice of the fact that an appreciable portion of the country's manufactured products are distributed through the instrumentality of dealerships. The operation of a dealership customarily requires the retailer to spend much money and effort in maintaining the same. It is for this reason that it is highly desirable that what provisions may or may not be included in a valid dealership agreement, should be clearly understood.

There is constant reference by both the Bench and Bar to the "doctrine of mutuality" but there exists a lack of guidance in decisions as to the applicability, if any, of the "doctrine of mutuality" to dealership contracts.

Williston on Contracts (Section 141) utterly condemns the doctrine of mutuality as being in conflict with the fundamental principles of common law.

It is the studied belief of this Petitioner that the effect of the present holding will lead to further confusion and promote litigation.

Because without definitely stating the reasons for the holding, dependence is largely placed upon citation of cases which presumably exemplify the point of law involved, but your Petitioner respectfully submits, the holdings in these cited cases are diverse, in some instances in conflict, and because of the multiplicity of legal points which this decision may be thought to sponsor, it is more likely to mislead than assist those who look to it for guidance.

III. The decision in this case is not in harmony with the intent of law.

Plaintiff respectfully submits, it is the intent of the law that one who breaks promises and makes false representations shall not be permitted to profit thereby.

The decision in this case arrives at the conclusion, that a Defendant who broke a promise for which it has received common-law consideration; a Defendant who to serve its own interests made representations for the purpose of influencing the actions of another and succeeded in doing so, which representations later proved to be false; a Defendant who considerably enriched itself and ruinously damaged another by actions entirely opposite to its commitments, may yet go its way entirely untroubled and untouched by any legal liability whatsoever.

Respectfully submitted,

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